

## **Deaf/Blindness Definition**

“Deaf/Blindness” means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

### **Criteria for Initial Determination of Eligibility**

A child is deaf/blind when:

- A. both visual and hearing impairments are present;
- B. the impairments together cause severe communication, developmental, and educational needs.

## **Emotional Disturbance Definition**

“Emotional Disturbance” means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance:

- A. an inability to learn that cannot be explained by intellectual, sensory or health factors;
- B. an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- C. inappropriate types of behavior or feelings under normal circumstances;
- D. a general pervasive mood of unhappiness or depression; and,
- E. a tendency to develop physical symptoms or fears associated with personal or social problems.

The term includes schizophrenia, but does not apply to children who are socially maladjusted unless it is determined they have an emotional disturbance.

### **Criteria for Initial Determination of Eligibility**

A child displays an emotional disturbance when:

- A. through evaluation procedures that must include observation of behavior in different environments, and an in-depth social history the child displays one of the following characteristics:
  - 1) an inability to learn that cannot be explained by intellectual, sensory or health factors;
  - 2) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
  - 3) inappropriate types of behavior or feelings under normal circumstances;
  - 4) a general pervasive mood of unhappiness or depression; and,
  - 5) a tendency to develop physical symptoms or fears associated with personal or social problems.
- B. the characteristic(s) must have existed to a marked degree and over an extended period of time. In most cases, an extended period of time would be a range from two (2) through nine (9) months depending upon the age of the child and the type of

- behavior occurring. For example, a shorter duration of disturbance that interrupts the learning process in a younger student might constitute an extended period of time. Difficulties may have occurred prior to the referral for evaluation;
- C. the emotional disturbance adversely affects the child's educational performance.

NOTE: Manifestations of an emotional disturbance can be observed along a continuum ranging from normal behavior to severely disordered behavior. Children who experience and demonstrate problems of everyday living and/or those who develop transient symptoms due to a specific crisis or stressful experience are not considered to have an emotional disturbance.

### **Hearing Impairment and Deafness Definition**

"Hearing Impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance, but is not included in the following definition for deafness.

"Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

#### **Criteria for Initial Determination of Eligibility**

A child displays a Hearing Impairment when:

- A. a hearing impairment has been diagnosed by an audiologist;
- B. the hearing impairment adversely affects the child's educational performance.

### **Mental Retardation Definition**

"Mental Retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period that adversely affects a child's educational performance.

#### **Criteria for Initial Determination of Eligibility**

A child displays mental retardation when:

- A. the child performs 2.0 Standard Deviations below their peers of equivalent age, ethnic, and cultural background when measured by a standardized instrument of cognitive ability;
- B. the child displays adaptive behavior consistent with measured cognitive ability. Adaptive behavior refers to the effectiveness with which a student meets the standards of personal independence and social responsibility expected of his/her age and cultural group. There should be a significant positive correlation between the student's intellectual ability and adaptive behavior. If not, the team must give careful consideration to other evaluative information and utilize professional judgment to determine the student's level of cognitive and adaptive functioning;
- C. the disability adversely affects the child's educational performance.

### Professional Judgment

A child who does not display a discrepancy of at least 1.5 standard deviations as defined in B above, may nonetheless be deemed to have a specific learning disability if 1) the child meets the other criteria of this rule; and 2) based upon professional judgment and review of formal and informal assessments, the evaluation team concludes that a severe discrepancy exists. In such cases, sufficient data must be presented in the evaluation report to document the existence of a specific learning disability.

### **Speech or Language Impairment Definition**

“Speech or Language Impairment” means a communication disorder, such as stuttering, impaired articulation, a language impairment or a voice impairment, that adversely affects a child’s educational performance.

#### Criteria for Initial Determination of Eligibility - Language

A language disorder is present when:

- A. the child consistently exhibits inappropriate use in any of the structures of language (e.g., morphology, syntax, semantics, and pragmatics) as measured by language sampling or other clinical tasks;
- B. the child’s language functioning is significantly below the child’s abilities as measured by two (2) or more standardized language assessments. Significantly below is defined as two (2) standard deviations below the mean for children 3 to 5 years of age but not eligible for kindergarten; one standard deviation below cognitive ability for children who are kindergarten age eligible through age 8 and 1.5 standard deviation below cognitive ability for children who are age 9 and older;
- C. the language disorder adversely affects the child’s educational performance;
- D. the language disorder is not a result of dialectal differences or second language influence;

### Professional Judgment

A child may also be deemed eligible if the evaluation documents through formal and informal assessment that a language deficit is present even though the standard scores do not meet the criteria in B above. In such cases, sufficient data must be presented in the evaluation report to document the existence of the language deficit.

#### Criteria for Determination of Initial Eligibility - Sound System Disorder

A Sound System Disorder, which includes articulation and/or phonology, is present when:

- A. the student exhibits a delay of correct sound production based on accepted normative data. The child’s sound system is evaluated based on a single word test and/or a sentence/phrase repetition task and a connected speech sample;
- B. consideration must be given to the type of error recorded (substitutions, omissions, distortions and/or additions). These errors may be described as single sound errors or errors in phonological patterns;
- C. a Sound System Disorder may also be present if multiple errors in the child’s speech compromise intelligibility and/or listener perception even though the recorded errors are considered within normal developmental guidelines;
- D. the Sound System Disorder adversely affects the child’s educational performance;

- E. the sound system disorder is not a result of dialectal differences or second language influence.

The evaluation report must include sufficient data to document the existence of the Sound System Disorder and if, during the collection and analysis of the data, the child's language abilities appear to be impaired, a language evaluation will need to be completed prior to a designation of language disorder.

#### Criteria for Initial Determination of Eligibility - Fluency

A fluency disorder is present when:

- A. the child consistently exhibits one or more of the following symptomatic behaviors of dysfluency:
  - 1) sound, syllabic, or word repetition;
  - 2) prolongations of sounds, syllables, or words;
  - 3) blockages; or,
  - 4) hesitations;
- B. the child's fluency is significantly below the norm as measured by speech sampling in a variety of contexts. A significant discrepancy is defined as five (5) or more dysfluencies per minute or a 10 percent dysfluency rate and distracting to the listener;
- C. the fluency disorder adversely affects the child's educational performance

#### Professional Judgment

A child may also be deemed eligible if the evaluation documents through formal and informal assessment that a fluency deficit is present even though the criterion in B above is not met. In such cases, sufficient data must be presented in the evaluation report to document the existence of the fluency deficit.

#### Criteria for Initial Determination of Eligibility - Voice

A voice disorder is present when:

- A. the child consistently exhibits deviations in one or more of the parameters of voice: pitch, quality, or volume;
- B. the child's voice is discrepant from the norm as related to his/her age, sex, and culture and is distracting to the listener;
- C. the voice disorder is not the result of a temporary problem such as: normal voice changes, allergies, colds, or other such conditions;
- D. the voice disorder adversely affects the child's educational performance.

#### **Traumatic Brain Injury (TBI) Definition**

"Traumatic Brain Injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term includes open or closed head injuries resulting in impairments in one or more areas, such as, cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor abilities, psychological

#### **IV. FAPE/IEP/LRE**

##### **1. FREE APPROPRIATE PUBLIC EDUCATION**

It is the policy of the State of Missouri that all children with disabilities between the ages of three (3) and twenty-one (21) years as prescribed by Missouri statutes and residing in the state have a right to a free appropriate public education (FAPE), including children with disabilities who have been suspended or expelled from school.

The term "students with disabilities" as used in this document includes all students defined as "handicapped" and "severely handicapped" in accordance with 162.675(2)(3) RSMo and the Individuals with Disabilities Education Act (IDEA). Definitions of each disabling condition are found in Regulation III. 2. of this document.

A free appropriate public education (FAPE) is defined to include regular and special education and related services which:

- A. are provided at public expense, under public supervision and direction, and without charge to the parent;
- B. meet the educational standards of the State Education Agency pertaining to the education of students with disabilities;
- C. includes preschool, elementary school, secondary school education; and,
- D. are provided in conformity with the individualized education program (IEP).

##### **FAPE for Children Begins at Age 3**

The State of Missouri ensures that FAPE is available to each eligible child residing in the state no later than the child's 3<sup>rd</sup> birthday. An IEP must be in effect by the child's third birth date. If the child's 3<sup>rd</sup> birth date occurs during the summer, the child's IEP team shall determine the date when the services under the IEP will begin. Regulation IV.4. of this State Plan outlines procedures that the Part C system must complete to assure a smooth transition for children eligible for Part B services at age 3.

##### **FAPE for Children Suspended or Expelled from School**

A public agency is not required to provide services to a child with a disability who has been removed from his or her current placement for ten (10) school days or less in that school year if services are not provided to a child without disabilities who has been similarly removed.

In the case of a child with a disability who has been removed for more than ten (10) school days in a school year, the public agency, for the remainder of the removals must:

- A. provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the child's IEP if the removal is:
  - 1) under the school personnel's authority to remove for not more than ten (10) consecutive school days as long as that removal does not constitute a change of placement; or
  - 2) for behavior that is not a manifestation of the child's disability and results in a disciplinary change of placement.

- B. Provide services consistent with 34CFR 300.522 (see page 59) regarding determination of an appropriate Interim Alternative Educational Setting to enable the child to continue to progress in the general curriculum if the removal is:
- 1) for drugs or weapons offenses, or
  - 2) based on a hearing officer's determination that maintaining the current placement of the child is substantially likely to result in injury to the child or to others if he or she remains in the current placement.

School personnel, in consultation with the child's special education teacher, determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed under the authority of school personnel to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement.

The child's IEP team determines the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward meeting the goals in the child's IEP if the child is removed because of behavior that has been determined not to be a manifestation of the child's disability and results in a long-term suspension/disciplinary change of placement.

#### Children Advancing from Grade to Grade

The State of Missouri ensures that FAPE is available to any individual child with a disability who needs special education and related services, even though the child is advancing from grade to grade. The determination that such a child is eligible for services must be made on an individual basis by the group of individuals within the child's local education agency that is responsible for making those determinations.

#### Exceptions to FAPE

Public agencies in Missouri are not required to provide FAPE to the following children and youth:

- A. youth with disabilities who reach the age of 21; or,
- B. students who have graduated from high school with a regular high school diploma. However, students who have graduated, but have not been awarded a regular diploma continue to be eligible in Missouri to receive FAPE if they are under 21 years of age. Students who have obtained a General Education Diploma (GED), but not a regular high school diploma, continue to be eligible. Graduation from high school with a regular diploma constitutes a change in placement, requiring written prior notice in accordance with 34 CFR 300.503.

#### Agency Responsible for FAPE

The local school district or special school district in which a child with a disability resides is responsible for implementation of FAPE. Students with disabilities or severe disabilities who are admitted to programs and facilities of the Department of Mental Health or whose domicile is in one district, but actually reside in another district as a result of a placement arranged by or approved by the Department of Mental Health, the Department of Social Services, or a court of competent jurisdiction shall be provided special education and related services in the district where the student actually resides.

#### **4. TRANSITION OF CHILDREN FROM PART C SERVICES TO PART B SERVICES**

The State of Missouri has developed the following policies and procedures to ensure a smooth and effective transition from Part C (First Steps) services to Part B (local school district) services for children with disabilities at age three.

Six months prior to the child's third birth date, the Part C service coordinator will convene an IFSP meeting to discuss the transition process with the parents and other team members in order to develop a transition plan. At this time, the team documents the steps to be taken to provide the child with a smooth and effective transition to the public school and/or other services as appropriate. If the parent agrees, local education agency (LEA) personnel must be invited and attend this IFSP meeting. If a member of the LEA staff was invited, but did not attend the transition meeting, the LEA must contact the parent at least 120 days prior to the child's third birth date. The purpose of the contact is to explain the process the district will complete to determine the child's eligibility for services under Part B of the IDEA and, if eligible, the steps that will be necessary to assure the provision of services on the child's third birth date unless the birth date occurs during a routine school break.

If the parent wants an eligibility determination for special education and related services under Part B of IDEA, the Part C service coordinator shall release information to the LEA. Any information that will assist the LEA in determining the child's eligibility and special education and related service needs must be released and must be done in such a manner so as to ensure a timely receipt by the LEA. Information provided must include, at a minimum, the following:

- A. child and parent name, address, and phone number, and the child's birth date;
- B. current copy of the entire IFSP which includes present levels of functioning, early intervention services, and transition plan;
- C. all evaluations that have occurred in the previous year, and if not contained in the child's record, where the information can be obtained; and,
- D. any written reports from service providers within the last year.

Upon receipt of the information, the LEA must follow initial evaluation procedures as outlined in the Part B State Plan. LEAs are required to provide special education and related services to eligible children as identified in the IEP as of the child's third birth date unless the birth date occurs during a normal vacation period for the public school. The LEA can document that it has made a diligent effort to complete the evaluation and IEP process, but despite that effort, was unable to do so within time lines. IEPs developed in the spring or summer may identify the implementation date as the first day of school in the fall.

Part B eligible children whose third birth dates are May through August may continue in the First Steps program until the initiation of their local district's school year in the fall.

Eligible children whose third birth dates are April 1 through May 1 may either transition to Part B services before the end of the current school year or continue services in First Steps until the initiation of their local district's school year in August/September. This discussion is part of the transition conference. Children who enroll in the local school district for the remainder of the school year must be considered for Extended School Year as required by Part B of the Individuals with Disabilities Education Act.

Financial support for early intervention services that are provided after the child's summer third birth date are as follows:

Early intervention services that were financially supported prior to the child's third birth date by Part C funds will be paid by the Department of Elementary and Secondary Education (DESE) after the child's third birth date.

If LEA policy allows, eligible children whose third birth dates occur during September may receive services under Part B at the beginning of the district's school year.



## **V. PROCEDURAL SAFEGUARDS/DISCIPLINE**

The following statements reflect the policy which the Missouri Department of Elementary and Secondary Education has established to ensure procedural safeguards for all parties involved in the education of students with disabilities (Sections 162.945, 162.950(1)(2), 162.955, 162.961(1)(2)(3)(4)(5), 162.962(1)(2), 162.963(1)(2), 162.997(1)(2), 162.998(1)(2), and 162.999(1)(2)(3)(4)(5)(6)(7)(8), RSMo).

### **1. OPPORTUNITY TO EXAMINE EDUCATION RECORDS/PARENT PARTICIPATION IN MEETINGS**

The local school district and/or responsible public agency shall provide the parent/guardian with the opportunity to examine all education records regarding the student with respect to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the student.

The local school district and/or responsible public agency shall provide proper notification to ensure parents have the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the student.

A meeting does not include informal or unscheduled conversations involving staff and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

The local school district and/or responsible public agency shall ensure parents are members of any group that makes decisions on the educational placement of their child. Procedures for notification are the same as that for notification of IEP meetings.

If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the local school district or responsible public agency shall use other methods to ensure their participation, including individual or conference telephone calls or video conferencing. A placement decision may be made by a group without the involvement of the parents, if the local school district or responsible public agency is unable to obtain the parents' participation in the decision. In this case the local district or responsible public agency must have a record of its attempt to ensure their involvement. The local school district or responsible public agency shall make reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is other than English.

### **2. INDEPENDENT EDUCATIONAL EVALUATION (IEE)**

The parents of a student with a disability have a right to obtain an Independent Educational Evaluation (IEE) of the student. That right is subject to the requirement that the independent evaluation must meet the educational evaluation criteria used by the local school district or responsible public agency when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent evaluation.

Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student in question.

The right to an independent educational evaluation assures:

- A. that upon requesting an IEE, information about where an independent evaluation may be obtained and the agency criteria applicable for independent educational evaluations will be given to parents.
- B. that parents have the right to an independent evaluation at public expense for any agency evaluation, or any component of that evaluation, with which the parents disagree. However, the local school district or responsible public agency may initiate a hearing as described in Regulation V.6. to show that the evaluation is appropriate or that the evaluation obtained by the parent did not meet agency criteria. If the final decision is that the evaluation is appropriate, the parents still have the right to an independent educational evaluation, but not at public expense.
  - 1) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.
- C. that parents cannot be required to notify the local school district or responsible public agency prior to obtaining an independent evaluation at public expense. However, it is reasonable for the district to request notification before such an evaluation is conducted. Likewise a parent cannot be required to explain why they object to the public evaluation, but it is reasonable for the district to ask why.
- D. that if the local school district or responsible public agency has a policy regarding reimbursement for independent evaluations, that policy will specify the factors to be considered in the determination of public funding for the evaluation. That determination should be based on:
  - 1) the qualifications and locations of the evaluators; and,
  - 2) the cost of the evaluation.

The public agency may only impose limitations on the cost of an IEE if the agency uses those same limitations when conducting an evaluation. If a public agency uses such cost limitations, it must ensure that its procedures require payment for an IEE at a higher rate if an appropriate IEE cannot, in light of the child's unique needs and other unique circumstances, be obtained within those cost limitations. If the cost of an IEE at public expense exceeds the agency's cost limitations, the public agency must either: (a) initiate a due process hearing or (b) pay the full cost of the IEE.

- E. that if the local school district or responsible agency has a policy regarding reimbursement for independent evaluations and that policy establishes allowable maximum charges for specific tests or types of evaluations, the maximum set will still enable parents to choose from among qualified professionals in the area and will result only in the elimination of excessive fees. The policy shall specify that the local school district or responsible agency will pay the fee for the independent evaluation up to the maximum established. Additionally, the policy will anticipate that a student's "unique circumstances" may justify an evaluation that exceeds the allowable cost criteria.

- F. that if the local school district or responsible agency has no policy which sets maximum allowable charges for specific tests or types of evaluation, then the parents will be reimbursed for services rendered by a qualified evaluator.
- G. except for the location of the evaluation and the qualifications of the examiner, a local school district or public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. These criteria for IEEs at public expense must apply equally to the local school district's or public agency's own evaluations and exceptions for unique circumstances must be considered.
- H. that the results of an independent evaluation obtained by the parents at private expense:
  - 1) will be considered by the local school district or responsible public agency in any decision made with respect to the provisions of a free appropriate public education to the student; and,
  - 2) may be presented as evidence at a hearing under this subpart regarding that student.
- I. that the cost of an independent evaluation will be at public expense if a hearing officer requests an independent educational evaluation as part of a hearing.

### **3. WRITTEN NOTICE**

Written notice must be given to parents a reasonable time before the local school district or responsible public agency initiates or changes the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student. If the notice relates to an action proposed that also requires parent consent, the agency may give notice at the same time it requests parent consent. The notice must be written in language understandable to the general public and provided in the native language of the parents or other mode of communication used by the parents, unless it is clearly not feasible to do so.

If the native language or other mode of communication of the parents is not a written language, the district shall ensure the following:

- A. that the notice is translated orally or by other means to the parents in their native language or other mode of communication;
- B. that the parents understand the content of the notice; and,
- C. that there is written evidence that those requirements have been met.

#### Content of Notice

The written notice sent to parents by the local school district or responsible public agency must contain the following:

- A. a description of the action proposed or refused by the agency;
- B. an explanation of why the agency proposes or refuses to take the action;
- C. a description of any options the agency considered and the reasons for rejection of the options not selected;
- D. a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposal or refusal;

- E. a description of any other factors which are relevant to the agency's proposed or refused action;
- F. a statement that the parents of a child with a disability have procedural safeguards protection and the means by which a copy of the description of the procedural safeguards can be obtained; and,
- G. sources for parents to contact to obtain assistance in understanding their procedural safeguards.

#### **4. PROCEDURAL SAFEGUARDS STATEMENT**

A copy of the procedural safeguards statement shall be given to parents, at a minimum:

- A. upon initial referral for evaluation;
- B. upon notification of individualized education program (IEP) meetings;
- C. upon reevaluation of the student; and,
- D. upon request for a due process hearing.

The procedural safeguards statement must include a full explanation of all of the procedural safeguards relating to independent educational evaluation; prior written notice; parental consent; access to educational records; opportunity to present complaints to initiate due process hearings; the child's placement during dependency of due process proceedings; procedures for students who are subject to placement in an interim alternative educational setting; requirements for unilateral placement by parents of children in private schools at public expense; mediation; due process hearings; including requirements for disclosure of evaluation results and recommendations; civil actions; attorneys' fees; and the State complaint procedures which includes a description of how to file a complaint and the timelines under those procedures.

#### **5. WRITTEN CONSENT**

Written, informed, consent of the parent must be obtained by the local school district or responsible public agency from a parent prior to:

- A. commencing the initial evaluation, if additional testing is needed, or any additional testing as part of the reevaluation process; or,
- B. initial provision of special education or related services to a student with a disability.

Consent for initial evaluation may not be construed as consent for initial placement. Parent consent is not required before reviewing existing data as part of an evaluation or a reevaluation or administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

Written consent is not necessary for any subsequent placements and consent for reevaluations need not be obtained if the school district can demonstrate that it had taken reasonable measures to obtain consent and the parent failed to respond. "Reasonable measures" include a minimum of two (2) attempts documented, such as: detailed records of telephone calls made and the results of those calls; copies of correspondence sent to the parent and responses received; detailed records of visits to the parent's home or work place and the results of those visits. Neither may lack of consent after the initial evaluation or the initial placement be a cause for denial of any other service, activity, or benefit of the local school district.

Parent consent means that the:

- A. parent has been fully informed of all information relevant to the activity for which consent is sought in his or her native language or other mode of communication;
- B. parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and,
- C. parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; however, if the parent revokes consent, that revocation is not retroactive.

Evaluation means that procedures are used to determine whether a student is disabled and provide information for use by the IEP team to determine the nature and extent of the special education and related services that the student needs. The term means procedures used selectively with an individual student and does not include basic tests administered to or procedures used with all students in a school, grade, or class unless, before administration of that test or evaluation, consent is required of parents of all children. If a parent refuses consent for initial evaluation or reevaluation, the local school district or responsible public agency may continue to pursue those evaluations by using the due process hearing procedures. These procedures, which include mediation, are explained in Regulation V.6., Administrative Hearing Rights which follows in this section.

Personally identifiable means that records include:

- A. the name of the student, the student's parents, or other family member;
- B. the address of the student;
- C. a personal identifier, such as the student's social security number or student number; or,
- D. a list of personal characteristics or other information which would make it possible to identify the student with reasonable certainty.

## **6. ADMINISTRATIVE HEARING RIGHTS**

Parents or a public agency may initiate due process concerning the proposed action of the agency to initiate or refuse to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student. These rights shall be assured through the procedures outlined for resolution conferences and state-level hearing panels.

### Resolution Conference

The resolution conference is conducted by the chief administrative officer of the school district or a designee pursuant to Section 162.950, RSMo.

- A. Process: The resolution conference is informal. Witnesses are not sworn, and a written record is not maintained. The parents or guardian have the right to examine all educational records prior to the review. Both the school staff and the parents or guardian have the right to call witnesses, question witnesses, and present any written or oral information which pertains to the action.
- B. Timelines: The resolution conference must be held and the decision issued within ten (10) days from the date of the request. The time line may be extended by mutual agreement of the parties.

- C. Either a responsible public agency or a parent can waive the right to a resolution conference and request a state-level hearing panel (three member hearing panel). A request for state-level hearing by either a parent or a public agency shall be treated as a waiver of a resolution conference and processed. A parent may not be forced to proceed to a resolution conference in lieu of a due process hearing where the agency and not the parent initiates a resolution conference.

#### State-level Hearing Panel

Appeal of the resolution conference decision is to the state board of education pursuant to Section 162.961, RSMo. A request for a due process hearing shall include the child's name, address, school, issue, and suggested resolution of dispute, if known.

- A. Process: Except as provided below in expedited hearings under §162.961.6, RSMo, a panel of three individuals is empowered, one member designated by the school, one member designated by the parents or guardian, and the chair selected by the State Department of Elementary and Secondary Education. The chair is a licensed attorney. If either party has not successfully chosen a willing and available panel member with ten (10) days after the Department of Elementary and Secondary Education receives the request for a due process hearing, the panel member(s) will be chosen instead by the Department. Each member must be determined to be impartial and be knowledgeable of students with disabilities.
- B. Hearing Rights: Any party to a hearing has the right to:
- 1) be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities;
  - 2) present evidence and confront, cross-examine, and compel the attendance of witnesses;
  - 3) prohibit the introduction of any evidence, including all evaluations and recommendations based on the offering party's evaluation at the hearing that has not been disclosed to that party at least five (5) business days before the hearing;
  - 4) obtain a written or, at the option of the parents electronic verbatim record of the hearing at no cost; and,
  - 5) obtain written or, at the option of the parents, electronic findings of fact and decisions at no cost;

In addition, the parents have the right to open the hearing to the public; otherwise, it is closed. The parents may also elect to have the student present at the hearing.

A copy of the written findings and decision shall be mailed to each party and to the State Department of Elementary and Secondary Education (DESE). The DESE shall provide a copy of the findings and decision, with all personal identifiers removed, to the Missouri Special Education Advisory Panel and shall make the findings and decision available to the public (with all personally identifiable information deleted).

- C. Timelines: Except in the case of an expedited hearing provided for below, the hearing panel must be empowered within fifteen (15) days of the date of the appeal of the resolution conference decision or the request for a three member hearing panel if the parents waive their right to a resolution conference. The hearing panel must conduct the hearing, render and mail a written decision within 45 days of the date of the request for due process. The decision timeline may be extended upon request of the party/parties and agreement by the hearing panel chair.

### Site of the Hearing

Each hearing must be conducted at a time and place which is reasonably convenient to the parents and student involved.

### Legal Services

The parent/guardian will be informed of any free or low-cost legal and other relevant services available in the area if:

- A. the parent requests the information; or,
- B. the parent or the agency initiates an impartial due process hearing.

### Hearing Officers

Hearing officers shall not have a personal or professional interest in the matters that are before them which would conflict with their objectivity in the hearing. Hearing officers shall have an affirmative obligation to seek out any conflict of interest and withdraw from any matter in which a conflict is identified. Hearing officers must be Missouri residents or demonstrate employment in Missouri.

- A. A hearing shall not be held by an employee of a public agency which is involved in the education or care of the student or an employee of the State Board of Education.
- B. Specific allegations of conflict of interest shall be filed with the Department of Elementary and Secondary Education, Division of Special Education, and investigated under the Child Complaint Process, Regulation VI.2.
- C. A person who otherwise qualifies to conduct a hearing is not an employee of the agency because he or she is paid by the agency to serve as a hearing officer.

### Hearing Officer Lists

The Department shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualification of each of those persons. Attorneys on contract to serve as chairs will be on a separate list. Others who serve as hearing panel members will be placed on the list if they meet training and assessment requirements of the Department, agree to be compensated at a rate set by the Department, and provide the Department with a resume or biographical statement reflecting their qualifications.

### Training and Assessment Requirements for Hearing Officers

Hearing officers who do not serve in the role of chair must meet the following training requirements:

- A. attend a minimum of one out of every two trainings conducted by the Department of Elementary and Secondary Education. Trainings will be held approximately every 18 months. Failure to meet this requirement will result in the removal from the hearing officer list. Attendance at a future training session will be necessary to be placed back on the list; and,
- B. in extraordinary circumstances, the department has the discretion to waive this requirement. Waiver requests must be in writing with supporting documentation. Denial of a waiver is not appealable.

## Mediation

Upon receipt of a request for due process hearing the parties will be offered the opportunity to mediate their dispute. Both parties must agree to mediation unless federal law provides to the contrary, and mediation will be provided at no cost to either party.

### A. Process

The parties must mutually agree on a mediator from the trained mediator list maintained by the Department of Elementary and Secondary Education, Special Education Division.

- 1) Mediation must be scheduled within fifteen days of the selection of a mediator.
- 2) Mediation must be conducted at a time and place mutually agreed upon by the parties.
- 3) Mediation must be completed within thirty days of the agreement to mediate.
- 4) Any agreement reached during mediation must be in writing and delivered to each party.
- 5) No more than three persons can accompany each party unless the parties mutually agree on additional participants.
- 6) No attorney shall participate or attend on behalf of any party at the mediation session. However, parents may be accompanied by a lay advocate.
- 7) Mediation may not be used to deny or delay a parent's right to a due process hearing or to deny any other rights under Part B of IDEA.
- 8) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to commencement of the process.

### B. Mediator Qualifications

- 1) Mediators must be impartial and free of any conflict of interest.
- 2) Mediators shall not be employees of an LEA, or a public agency which is involved in the education or care of the student, or of the State Board of Education. A person who otherwise qualifies as a mediator is not an employee of the State Board of Education or LEA solely because he or she is paid by the agency to serve as a mediator.
- 3) Mediators must have a minimum of 16 hours of training as a mediator.
- 4) Mediators, to be placed on the Department's mediator list, must meet the above requirements, and must: agree to be compensated at a rate set by the Department, and provide the Department with a resume or biographical statement reflecting their qualifications.
- 5) Mediators must be knowledgeable in laws and regulations relating to the provision of special education and related services.

### C. Mediation in the Absence of a Due Process Request

Parties have the right to seek mediation of their disputes outside of the state mediation process and due process system. However, the Department will only pay for mediation if the parties agree to it in connection with a due process request. Should the parties decide to mediate their disputes in the absence of a due process request, none of the state requirements for mediation apply.



#### D. Effect on Due Process Hearing Timelines

The process for choosing panel members and scheduling the due process hearing will occur simultaneously with the mediation process. In the event that the due process hearing is scheduled for a date prior to the date of completion of the mediation, one or both of the parties will need to request and obtain an extension of the due process hearing timeline from the Chairperson of the three member panel if the desire is to proceed with the mediation.

#### Civil Proceedings

Any party aggrieved by the findings and decisions made in a hearing may appeal the decision of the hearing panel to the state courts as provided in Chapter 536, RSMo., or in federal court without regard to the amount in controversy. To the extent that Chapter 536, RSMo. provisions conflict with the IDEA judicial review requirements at 34 CFR 300.512(b) the IDEA judicial review provisions are controlling. The court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and shall base its decision on the preponderance of the evidence, granting the relief the court deems appropriate.

#### Maintenance of Placement

During the pendency of any administrative or judicial proceeding pursuant to Section 162.950 and Section 162.960 RSMo, there will be no change in the assignment or status of a student with a disability unless such change has been made with the written consent of the parent or guardian. However, students who are endangering themselves or others can have their status changed, without the written consent of the parent or guardian, pursuant to court order.

In an instance where a student is initially enrolling in school and the parents or the local school district request a hearing on the assignment of the student in a special education program, the student, with consent of the parents, will be placed in the public school program, pending completion of the due process proceedings in accordance with the provisions of Section 162.955, RSMo.

When a school district contacts a State Board of Education operated program for consideration of a student's eligibility for acceptance and enrollment, the district shall assure that the student will be enrolled or will maintain enrollment in the district pending final action by the state.

If the decision of a hearing panel in a due process hearing agrees with the student's parents that a change of placement is appropriate, that placement must be treated as an agreement between the local school district or responsible public agency and the parents for purposes of "stay-put" pending and during judicial appeal.

#### Attorneys' Fees

In any action or proceeding brought under 20 U.S.C. Section 1415(E), the court, in its discretion, may award reasonable attorneys' fees as part of the cost to the parent or guardian who is a prevailing party pursuant to 20 U.S.C. Section 1415(E)(4).

Funds under Part B of IDEA may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under this section. A public agency may use Part B funds for conducting an action or proceeding under this section.

A court award for reasonable attorney's fees is subject to the following:

- A. the award must be based on prevailing rates in the community in which the action arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fee award;
- B. attorney fees and related costs may not be reimbursed for services performed subsequent to the time of a written offer of settlement to a parent if: the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure, or in the case of an administrative proceeding, at any time more than ten (10) days before the proceeding begins; the offer is not accepted within ten (10) days; and the court or hearing officer finds that the relief finally obtained is not more favorable to the parents than the offer of settlement. However, if the parent prevails and was substantially justified in rejecting the settlement offer an award of attorney fees and related costs may be made;
- C. attorney fees may not be awarded related to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action; and,
- D. the court may reduce the amount of attorney fees awarded if: the parent unreasonably protracted the final resolution of the controversy, the amount unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation and experience; the time spent and legal services furnished were excessive considering the nature of the action/proceeding; or, the attorney representing the parent did not provide to the school district the appropriate information in the due process hearing request required by regulation.

NOTE: Attorney fees may not be reduced if the court finds the state or local agency unreasonably protracted the final resolution, or there was a violation of the Procedural Safeguards.

## **7. SURROGATE PARENTS (EDUCATIONAL SURROGATES)**

The Missouri Department of Elementary and Secondary Education has established the following for the appointment of surrogate parents:

### Identifying the Need for Appointment

Any person may advise a responsible public agency that a student with a disability within its jurisdiction may be in need of a person to act as a surrogate parent. Notice can be given to the public agency responsible for providing education to students with disabilities or directly to the Division of Special Education.

### Process of Appointment

When the public agency responsible for providing education to students with disabilities is informed of a student with disabilities living within its jurisdiction, it shall, within thirty (30) days, determine whether a surrogate parent should be appointed. A request for the appointment of a surrogate shall be made within ten (10) days to the Division of Special Education. The Division, on behalf of the State Board of Education, shall, within thirty (30) days, appoint a person to act as a surrogate parent. The Division shall maintain a registry of trained surrogate parents from which they will select individuals for appointment. If a surrogate parent dies, resigns, or is removed, within 15 days thereof, a replacement will be appointed.

recommendation of termination and attach any existing documentation. Upon receipt of a recommendation of termination, the Division will investigate and reach a decision on whether to terminate.

### Termination

The surrogate parent appointment shall be terminated at the request of the surrogate parent or in the event of any of the following situations:

- A. the conclusions of the initial educational evaluation indicate that the student does not qualify for receiving special education;
- B. the student's parent or guardian reappears to represent him or her, or wardship is terminated;
- C. the student is no longer in need of special education services;
- D. the student reaches the age of majority;
- E. the surrogate parent fails to fulfill their responsibilities as defined by state and federal regulations; and,
- F. the student graduates and/or reaches age 21.

## **8. TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY**

When a student with a disability reaches age 18, the local school district or responsible public agency shall provide any required notice to both the student and the parents. All other rights accorded to parents under Part B of IDEA transfer to the student. All rights accorded to parents transfer to students, at age 18, who are incarcerated in an adult or juvenile, State or local correctional institution. The student and parent must be notified of the transfer of rights. The transfer does not apply if the student is declared incompetent by a court of competent jurisdiction.

## **9. DISCIPLINARY ACTIONS/REMOVALS/EXPEDITED HEARINGS**

### Ten (10) School Days or Less

A child may be removed from his current placement for ten school days or less by the school district, to an appropriate interim alternative educational setting, another setting, or suspension without providing services, unless the conduct involves drugs or weapons, in which case the change may be for 45 days and would require services in an alternative setting as explained below or the conduct involved is unrelated to the child's disability, in which case the change may involve a long-term suspension or expulsion and would require services in an alternative setting as explained below. A long-term suspension is a suspension in excess of ten (10) days consecutively, or in excess of ten (10) days cumulatively in a school year where a pattern of suspension is created. To determine if a pattern is created, three factors are considered: duration of each removal, frequency of each removal, and total amount of time child is removed for that school year.

### 45 Days

A child's placement may be changed for 45 days by the school district, to an appropriate interim alternative educational setting, if the child possessed a dangerous weapon at school or a school function or knowingly possessed or used illegal drugs or

sells or solicits the sale of a controlled substance while at school or a school function. On the date on which the decision to take that action is made, the parent must be notified of the decision and provided the Procedural Safeguards statement.

#### Behavioral Assessment

On or before the end of the tenth business day of a disciplinary action which for the first time that school year exceeds 10 days cumulatively, if the school district did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the discipline action, the school district must convene an IEP meeting to develop an assessment plan to address that behavior. If the child already has a behavioral intervention plan, the IEP team shall review the plan and modify it, as necessary, to address the behavior involved in the disciplinary action. If the child does not already have such a plan, the IEP team shall develop one. Any subsequent removals, which do not constitute a disciplinary change of placement, require that the IEP team review the behavior intervention plan and its implementation to determine if modifications are necessary. If one or more of the IEP team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

#### Determination of Setting (CFR 300.522)

The interim alternative educational setting must be determined by the IEP team. Any interim alternative educational setting in which a child is placed must be selected so as to enable the child to continue to progress in the general education curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in the IEP and include services and modifications to address the behavior described in 300.520(a)(2) (weapons or drugs) or 300.521 (injury to child or to others) that are designed to prevent the behavior from reoccurring.

#### Manifestation Determination

Immediately, if possible, but no later than ten (10) school days after the date on which the decision to implement a disciplinary change of placement (e.g., 45 day interim alternative educational placement, long-term suspension), the IEP team shall determine whether there is a relationship between the child's disability and the behavior subject to the disciplinary action. If the conduct is determined unrelated to the child's disability, disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities. However, in that event, the child must still receive a free appropriate public education. If the school district initiates disciplinary procedures applicable to all children, the special education and disciplinary records of the child shall be transmitted for consideration by the person or persons making the final determination regarding the disciplinary action. If the parent disagrees with a

determination that the child's behavior was not a manifestation of his disability, or with any decision regarding placement in a disciplinary situation involving a disciplinary change of placement (e.g., 45 day interim alternative educational placement, long-term suspension), the parent has the right to request an expedited due process hearing. The IEP team may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP team first considers all relevant information, including evaluation and diagnostic results (including results or other relevant information provided by the parent), observations of the child, the child's IEP and placement, and then determines that:

- A. the IEP and placement were appropriate and special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;
- B. the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to the disciplinary action; and,
- C. the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

In the absence of any of these factors being considered or determinations made, the IEP team must consider the behavior a manifestation of his disability. If the team identified deficiencies in the child's IEP or placement or in the implementation, it must take immediate steps to remedy those deficiencies.

In reviewing a manifestation determination decision, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the listed factors being considered and the listed determinations being made.

#### Dangerous Students (34 CFR 300.521)

If the school district believes the child will injure himself or others, the school district has the right to obtain an expedited due process hearing to seek a 45 day interim alternative educational setting. This procedure may be repeated as necessary. The parent must be notified of the decision to seek this order on the day the decision is made and provided the procedural safeguards statement. At that hearing, the hearing officer may order a change in placement to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer:

- A. determines the school district has demonstrated by substantial evidence (i.e. beyond a preponderance of the evidence) that maintaining the current placement of such child is substantially likely to result in injury to the child or others;
- B. considers the appropriateness of the child's current placement;
- C. considers whether the school district has made reasonable efforts to minimize the risk of harm in the child's current placement including the use of supplementary aids and services; and,

- D. determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the child's special education teacher enables the child to continue to progress in the general curriculum, although in another setting, and continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP and include services and modifications that are designed to prevent the dangerous behavior from reoccurring.

#### "Stay-put" Under Disciplinary Actions

If the parent requests a due process hearing regarding the discipline action to challenge the interim alternative educational setting or the manifestation determination and when the child is disciplined for weapons, drugs, or because they are a danger to themselves or others, the child will remain in that interim alternative educational setting pending the hearing decision or until expiration of the time period of the interim alternative educational setting, whichever comes first (unless the parties agree otherwise). If school personnel maintain that it is dangerous for the student to be in the current placement (the placement prior to removal to the interim alternative educational setting) during the pendency of the due process proceedings, the school district may request an expedited hearing.

#### Protection for Children Not Yet Eligible for Special Education and Related Services

Students who have not been identified as disabled may be subjected to the same disciplinary measures applied to children without disabilities if the district did not have prior knowledge of the disability. If the school district is deemed to have knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action, the child may assert any of the protections for students with disabilities in the area of discipline. The district has knowledge of the disability when:

- A. the parent has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) that the student needs special education services; or,
- B. the student's behavior or performance has demonstrated a need for services; or,
- C. the parent has requested an evaluation; or,
- D. the student's teacher or other school staff has expressed concern about the student's behavior or performance to the director of special education or to other personnel in accordance with the agency's established child find or special education referral system.

A school district would not be deemed to have knowledge that the child is a child with a disability, if the school district conducted an evaluation and determined that the child was not a child with a disability, or determined that an evaluation was not necessary and provided proper Notice of Action Refused.

If a request for evaluation is made during the period the student is subject to disciplinary measures, the evaluation will be expedited. Until the evaluation is completed (assuming the school district is not deemed to have knowledge that the child is a child with a

disability prior to the behavior that precipitated the disciplinary action), the child remains in the educational placement determined by the school district, which can include suspension or expulsion without educational services. If the child is determined to be a child with a disability, the school district shall provide special education and related services and follow all required procedures for disciplining students with disabilities.

#### Reporting Crimes Committed by Students With Disabilities

School districts reporting crimes, to appropriate law enforcement and judicial authorities, committed by students with disabilities, shall ensure copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime. Transmittal of records must be in accordance with Family Educational Rights and Privacy Act (FERPA).

#### Definitions

- A. Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 USC 812 (c)).
- B. Illegal drug means a controlled substance but does not include such a substance that is legally possessed or used under the supervision of a licensed healthcare professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal Law.
- C. Substantial evidence means beyond a preponderance of the evidence.
- D. Weapon means dangerous weapon as defined under paragraph (2) of the first subsection (g) of Section 930 of title 18, United States Code. The term “dangerous weapon” means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.

#### Expedited Due Process Hearings

An expedited hearing requested in connection with a disciplinary action (involving a disciplinary change of placement) shall be held by a hearing officer appointed by the Department of Elementary and Secondary Education from a list of contract attorneys, within 45-days of the date the department receives the hearing request. A decision must be rendered within the same time-line and no extensions of the time-line are permitted. No discovery is permissible in an expedited hearing. All other provisions within the Procedural Safeguards regulations of this State Plan regarding hearing officers and hearings are applicable if not inconsistent with this subsection on expedited due process hearings.

LISTED BELOW ARE THE STATUTES OF THE STATE OF MISSOURI WHICH PROVIDE A LEGAL BASIS FOR PROCEDURAL SAFEGUARDS IN THIS STATE:

<i>(Section 162.950(1)(2), RSMo)</i>	<i>(Section 162.962 RSMo)</i>
<i>(Section 162.955, RSMo)</i>	<i>(Section 162.963(1)(2), RSMo)</i>
<i>(Section 162.958, RSMo)</i>	<i>(Section 162.997(1)(2), RSMo)</i>
<i>(Section 162.959, RSMo)</i>	<i>(Section 162.998(1)(2), RSMo)</i>
<i>(Section 162.961 (1)(2)(3)(4)(5), RSMo)</i>	<i>(Section 162.999(1)(2)(3)(4)(5)(6)(7)(8), RSMo)</i>

## IX. FUNDING

### 1. ANNUAL DESCRIPTION OF FUNDS

In order to receive funds under IDEA, the Missouri Department of Elementary and Secondary Education will annually describe how the amounts retained for State level activities will be used, how amounts will be allocated, and the percentage of those amounts, if any, that will be distributed to LEAs by formula.

If a state's plan for use of the funds described above does not change from the prior year, the State can submit a letter to the Office of Special Education Programs to meet the requirements of this section.

### 2. CLASS SIZE AND CASELOADS

#### A. Caseloads for Early Childhood Special Education (ECSE) Services

The number of personnel approved for each district will be based upon a review of the district's data for early childhood special education. ECSE funding will not be provided for staff serving children who are age 5 and kindergarten age eligible.

<b>Position/Full Time Equivalent</b>	<b>Caseload</b>
Teacher of Centerbased Self-Contained Classroom (see low incidence caseloads in following section)	12-22*
Paraprofessional in ECSE Classroom	12-22*
Teacher of Integrated Classroom (formerly referred to as Reverse Mainstream) (This number is for children with disabilities only; the class must have additional peers without disabilities.) At least ½ of the children must have an IEP/qualify for ECSE. Total class (session) size may not exceed 12.	12-20*
Itinerant Teacher (Includes Speech Therapists and ECSE teachers providing special education services in early childhood programs and/or homes)	Traveling Non-Traveling
	12-30 31-50
Diagnostic Staff - for each position	160
Related Service Staff Employed by District (Occupational Therapist, Physical Therapist, and Speech Therapist)	45-50
ECSE Dedicated Program or Process Coordinator (Administrator)	200
Secretary	200
Nurse (FTE can be increased if additional nursing needs are specifically addressed in IEP(s))	175
Social Worker -	general
	diagnostic
	related services
	175 160 50

\*based on 2 half day sessions with a class size of 6-11



B. Caseloads for Kindergarten - Grade 12 Special Education Services

The standards reflect approvable class size and caseloads at any given time during the school year. Variations may be considered upon request to the Division of Special Education, Department of Elementary and Secondary Education. Justification for approved variations may include, but not be limited to, consideration of the availability of certified personnel, the incidence of eligible students, their specified IEP requirements, and the availability of alternative resources for service. The Division of Special Education may require the assignment of a paraprofessional to a particular class as a condition of approval for a caseload exception.

- |   |            |
|---|------------|
| 1) Low Incidence Self-Contained Classrooms<br>(may also be used for early childhood classrooms) | Class Size |
| Multiple Disabilities; Deaf/Blind; Autistic   | 5-9        |
| Physically & Other Health Impaired  | 5-8        |
| Visually Impaired; Hearing Impaired   | 5-8        |
- 2) Speech Language Pathologist may qualify for Exceptional Pupil Aid in two ways:
- a) The pathologist provides direct services to 40-60 children with disabilities. For some students in this count, the pathologist may not be the designated casemanager.
  - b) The district may use the Caseload Calculation Worksheet described on the next page instead of the caseload range to qualify a Speech/Language Pathologist for approval of Exceptional Pupil Aid.

## CASELOAD CALCULATION WORKSHEET

1. Total of instructional minutes available per week.	
2. Minutes per week spent in the following activities:	
a. planning time (250 minutes required)	
b. screening time	
c. diagnostic time	
d. staffing time	
e. meeting/consultation time	
f. travel time	
g. other duties	
h. ECSE related activities (therapy, testing, travel, consultation, meetings)	
<b>TOTAL</b>	
3. Subtract the total on line 2 from line 1.	
4. To determine number of hours available per week for therapy divide by 60.	
5. To determine number of hours available per day for therapy divide by 5.	
6. Multiply this number by a factor of 10.	
7. Round this number up to the highest number.	
<b>The product of this number is the maximum number of students that can be served on this individual speech pathologist's caseload.</b>	

### Directions:

1. Find this number in your district's core data. Lunchtime is already backed out of minutes of instructional time in core data.
2. The minutes that are added together in this section will be an average of a typical week. The Missouri School Improvement Program (MSIP) resource standards require 250 minutes per week of planning time for all certificated staff.
3. The number obtained on step 7 represents an estimate of the maximum number of students the speech language pathologist would be able to serve. Speech language pathologists whose caseloads contain several students with significant disabilities that may require more services or other unique circumstances may need to have other considerations made concerning their caseload calculation.

This calculation considers the required activities involved in providing services for students who have speech and/or language disorders. The formula is designed to be flexible and will provide an accurate reflection of the responsibilities for one full-time speech/language pathologist.

### C. All Other Special Education Caseloads

The number of students to be assigned to a class is determined by use of a formula which combines the number of IEPs for which a teacher is responsible with the aggregate number of equivalent student contact hours accruing to the teacher during the day. The sum equals a Caseload Number which may not exceed 60. The formula is as follows:

$$\#IEPs + CONTACT\# \leq CASELOAD\#$$

#IEPs equals the number of IEPs the teacher is responsible for on a case manager basis;

CONTACT# equals the aggregated number of equivalent student contact hours for the teacher during the day; and,

CASELOAD# equals the limit for service which may be provided by a particular program or class.

#### Definitions

CASELOAD# is a derived number for the formula and is defined as 60.

CONTACT# is the equivalent of the total number of student contact hours which accrue to the teacher during a normal school day. It includes all students served by the teacher, regardless of which teacher serves as the case manager. The CONTACT# is a computed value, determined by dividing the total student minutes per week (symbolized as STU.MINWK) by the number of minutes per day the teacher has available for direct contact instruction, (symbolized as TEA.MINDAY). Therefore:

$$CONTACT\# = STU.MINWK / TEA.MINDAY$$

STU.MINWK is determined by aggregating the number of minutes per week the students are assigned to the special education teacher, as stated on the student's IEP, without regard for which teacher serves as the Case Manager. STU.MINWK must also include student 'walk-in' time where the district's policy allows for such activity. For students served in a class-within a class (CWC), count only the minutes for up to the first five students.

TEA.MINDAY is the number of minutes per day the teacher is available for instruction in the special education class and is determined by dividing by five (5) the teacher's minutes of instruction per week as reported for special education assignments on the district's Core Data report.

An ALTERNATIVE method of determining TEA.MINDAY is to subtract the total number of minutes for planning time, supplemental duties and assignments, and non special education teaching assignments from the total number of minutes in the district's normal instructional day.

#IEPs is the number of IEPs the teacher is responsible for, on a case manager basis, and is the number traditionally reported as the teacher's caseload under the current State Board Caseload Standards.

recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.

- C. Profession or discipline means a specific occupational category that provides special education and related services to children with disabilities under Part B of the Act has been established or designated by the state, has a required scope of responsibility and degree of supervision and is not limited to traditional occupational categories.

### Policies and Procedures

Missouri's policies and procedures ensure that personnel necessary to carry out the purposes of Part B of IDEA are appropriately and adequately prepared and trained. The policies and procedures are consistent with this section and provide for the establishment and maintenance of standards that are consistent with any State Board of Education approved certification, or Missouri licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing special education or related services. Missouri has identified the specific occupational categories required to provide special education and related services within the State including roles, job titles, and qualifications. The Missouri Department of Elementary and Secondary Education will revise or expand occupational categories as needed.

### Steps for Retraining or Hiring Personnel

The State has developed procedures for Speech Implementers to serve students with disabilities in areas where there are shortages of Speech and Language therapists. The State through the State Improvement Plan is offering a Distance Learning program targeted to Implementers to assist them in attaining State Board Certification. All Implementers and district administrators were notified of the program in the spring of 1999. Tuition reimbursement is also being offered to the Implementers.

In order to meet the shortages of special education teachers in some areas of the state, tuition reimbursement is being offered to general education teachers and paraprofessionals who are interested in obtaining special education certification. All districts were notified of this program in the spring of 1999. All individuals participating in these programs have three years to reach full certification.

### Status of Personnel Standards in the State

The Missouri Department of Elementary and Secondary Education utilizes a variety of sources to determine the status of personnel standards in the state. Each year a survey is conducted in the state to identify personnel needs for each profession or discipline providing special education or related services.

The Missouri Department of Elementary and Secondary Education also contracts with Southwest Missouri State University to conduct an annual survey of Missouri districts to determine Supply and Demand of all teachers by state and region. Each local district also reports to the Department of Elementary and Secondary Education the number of teachers and other personnel employed to provide special education and related services.

All data are used by the State to determine the status of personnel standards in the State. The determination is based on current information that accurately describes, for each profession or discipline in which personnel are providing special education or related services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline. Information is on file at the State office and is available to the public.

#### Applicability of State Statutes and Agency Rules

In identifying the highest requirements in the State for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children with disabilities are considered.

#### Use of Paraprofessionals and Assistants

Missouri allows paraprofessionals, paraeducators and assistants who are appropriately trained and supervised to be used to assist in the provision of special education and related services to children with disabilities.

Local school district must provide each paraprofessional or paraeducator with the orientation and training necessary for the individual to perform the duties associated with the work assignment. At a minimum, such training shall include information and experiences related to:

- A. the type of disabilities displayed by the students with whom they will work;
- B. basic principles of behavior modification;
- C. basic instructional techniques expected to be used (demonstration, modeling, cueing, reinforcement, correction, etc.); and,
- D. other areas as necessary (positioning, lifting and transferring techniques, feeding procedures, etc.).

Paraprofessionals and paraeducators who do not hold a teaching certificate shall receive a minimum of 15 hours of training during their initial year of employment and a minimum of ten (10) hours of training in subsequent years.

#### **Personnel Standards**

The Personnel Standards outlined in the following pages list the **Titles, Responsibilities, Educational Qualifications**, and appropriate Missouri **Licensure or Certification** requirements for the personnel providing special education and related services for students with disabilities. The **Titles** listed are not intended to be a finite listing of occupational categories. Districts can determine that other positions are needed and request approval as described under the job title “Other Pupil Personnel”.

The descriptions listed under **Responsibilities** are not an all inclusive list. Districts should review applicable Practice Acts, code of ethics, and content of an individuals’ preparation program to determine if a designated individual can deliver specific services. Services must be provided consistent with the appropriate guidelines and requirements specified by the individual licensure requirements. In addition, the

administration of some standardized assessments have specific requirements for administration. Personnel, with the appropriate education and training, may be qualified to administer these assessments and may hold a variety of job titles.

The **Educational Qualifications** indicate the highest entry-level academic degree needed for state approved licensure or certification. Districts may employ individuals with qualifications that exceed these requirements. **Licensure and Certification** requirements are those currently in place and are subject to change by the appropriate governing agency. Specific requirements are available from the appropriate licensing or certifying agency that is listed.

In order for personnel to be paid in full or part from IDEA Part B funds, they must meet the standards in the Personnel Standards Chart.

## ***PERSONNEL STANDARDS***

<b>TITLE</b>	<b>RESPONSIBILITIES</b>	<b>EDUCATIONAL QUALIFICATIONS</b>	<b>CERTIFICATES OR LICENSE</b>
Audiologist	Plans and implements screening, evaluation/diagnosis, and special education services for hearing impaired students.	Master's Degree	License issued by the State Board of Registration for the Healing Arts
Audiology Aide	Works under direct supervision of a licensed audiologist.	High school diploma or GED	Registration certificate issued by the State Board of Registration for the Healing Arts
Casemanager	An administrative function that includes oversight of the IEP process on an individual student basis.	Bachelor's Degree	Any valid Missouri special education certificate
Counselor <ul style="list-style-type: none"> <li>• high school</li> <li>• middle school</li> <li>• elementary</li> </ul>	Provides direct guidance and counseling to eligible students with disabilities not routinely provided to the entire school population.	Master's Degree	Counselor certification by the State Board of Education
Counselor, Licensed Professional	Provides individual and group counseling techniques, methods or procedures for the purposes of assessing, understanding or influencing behavior. Conducts assessments for aptitudes, intelligence, attitudes, abilities, achievement, interests or personal characteristics. Provides Therapeutic vocational/personal rehabilitation.	Master's Degree	Licensed by the Division of Professional Registration
Educational Diagnostician*	Administers educational evaluations and assists in determining eligibility for special education.	Master's Degree	<ol style="list-style-type: none"> <li>1. Must have one of the following certificates issued by the State Board of Education: <ul style="list-style-type: none"> <li>• Special education</li> <li>• Guidance Counselor</li> <li>• School Psychological Examiner</li> <li>• School Psychologist</li> </ul> </li> <li>2. Licensed Professional Counselor licensed by the Division of Professional Registration</li> </ol>
Interpreter of the Deaf	Facilitates communication between students with hearing impairments and hearing persons.	High school diploma or GED	Certified by the Commission for the Deaf and licensed by the Division of Professional Registration. After January 1, 2003, an intermediate certificate issued by the Commission for the Deaf and license issued by Professional Registration.
Music Therapist	Participates in the development and implementation of IEPs.	Bachelor's Degree	Certification recognized by the American Music Therapy Association

\*For more specific information concerning test administration, see the introduction to this section.

<b>TITLE</b>	<b>RESPONSIBILITIES</b>	<b>EDUCATIONAL QUALIFICATIONS</b>	<b>CERTIFICATES OR LICENSE</b>
Occupational Therapist	Provides occupational therapy and evaluation services to eligible students with disabilities.	Bachelor's Degree	License issued by the Missouri Board of Occupational Therapy
Occupational Therapy, Certified Assistant (COTA)	Provides occupational therapy services under the direction of a licensed occupational therapist.	AA degree	License issued by the Missouri Board of Occupational Therapy
Orientation and Mobility Specialist	Provides orientation and mobility services to eligible students with visual impairments.	Bachelor's Degree with specialization in orientation and mobility, teaching the blind and visually impaired, rehabilitation teaching, special education, occupational therapy, physical therapy or closely related area	<ul style="list-style-type: none"> <li>• Certified by the Association for Education and Rehabilitation (AER) OR</li> <li>• Demonstrated proficiency in O&amp;M as required by a current contract with Rehabilitation Services for the Blind</li> </ul>
Orientation and Mobility, paraprofessional	Provides orientation and mobility services under the direction of an Orientation & Mobility Specialist.	Bachelors Degree in fields of study other than those listed above	<ul style="list-style-type: none"> <li>• Demonstrated proficiency in O&amp;M as required by a current contract with Rehabilitation Services for the Blind and 2 years supervised experience with blind/or visually impaired persons</li> </ul>
Other Pupil Personnel	Any trained professional not identified above, who provides special education support services.	Personnel must have academic preparation in the assigned area or job related experience in the assigned area	For Exceptional Pupil Aid (EPA) the position must be assigned by the local board of education and must have prior written approval of the position's job description and qualifications by the Division of Special Education Department of Elementary and Secondary Education.
Paraprofessional	Assists with the implementation of IEPs under the direction of the teacher. Additional responsibilities may include meeting the physical needs of the student, Braille instruction, preparation of materials and providing other supports that may be necessary based on the students needs and disability.	High school diploma or GED OR If assigned to a school-wide Title I building, meets the paraprofessional requirements of the No Child Left Behind Act.	None



<b>TITLE</b>	<b>RESPONSIBILITIES</b>	<b>EDUCATIONAL QUALIFICATIONS</b>	<b>CERTIFICATES OR LICENSE</b>
Paraprofessional for Braille Instruction	Provides Braille instruction to implement IEP goals and objectives.	High school diploma or GED OR If assigned to a school-wide Title I building, meets the paraprofessional requirements of the No Child Left Behind Act.	Demonstrated proficiency in Braille as required by a current contract with Rehabilitation Services for the Blind.
Physical Therapist	Provides physical therapy and evaluation services to eligible students with disabilities.	Bachelor's Degree OR Master's Degree if graduated after December 31, 2002	License issued by the State Board of Registration for the Healing Arts
Physical Therapist Assistant	Provides Physical Therapy services under the direction of a physical therapist.	60 hours prescribed course of study, Associate's degree	License issued by State Board of Registration for the Healing Arts
Physician	Provides medical, evaluative, and diagnostic services, and assists in planning and implementing special education services for students with disabilities.	Medical Degree	Physician licensed by the State Board of Registration for the Healing Arts
Psychologist, School	Administers psychological tests, participates on evaluation teams, provides psychological services to students with disabilities as specified on the IEP, and assists in planning and implementing special education services.	Master's Degree	School Psychologist certification by the State Board of Education
Psychologists	Administers psychological tests, participates on evaluation teams, provides psychological services to eligible disabled students as specified on the IEP, and assists in planning and implementing special education services.	Master's Degree	Licensed by the Division of Professional Registration as a Psychologist
Recreational Therapist	Participates in the development and implementation of IEPs.	Bachelor's Degree	Certification recognized by the Recreational Therapy Association
School Nurse, LPN	Provides health services under the direction of an RN or Physician.	One year course of study in practical nursing	Licensed by the State Board of Nursing
School Nurse, RN	Provides screening, evaluative, and diagnostic health information. This person provides health services to eligible students with disabilities as specified on the student's IEP. The health services would include only those not routinely provided to the entire school population.	Associate's Degree	Licensed by the State Board of Nursing

<b>TITLE</b>	<b>RESPONSIBILITIES</b>	<b>EDUCATIONAL QUALIFICATIONS</b>	<b>CERTIFICATES OR LICENSE</b>
School Psychological Examiner	Coordinates and/or participates on the multidisciplinary evaluation team, and assists in determining whether a student is disabled.	Master's Degree	School Psychological Examiner certification by the State Board of Education
School Social Worker	Provide services to parents of students with special education needs, assists in the development and implementation of IEPs. Assist in identification and assessment of individual's educational needs including social, emotional, behavioral, adaptive needs; develops and implements behavior intervention plans; provides individual, group, parent, and family counseling and consultation; serves as a liaison with home, school, and community.	Master's degree	Completion of an approved course of study in school social work accredited by CSWE or a School Social Work Specialist credential issued by National Association of School Social Workers (NASSW)
Social Worker, Licensed Clinical	Provides methods, principles, and techniques of casework, group work, client centered advocacy community organization, administration, planning, evaluation, consultation, research, psychotherapy and counseling methods and techniques to persons, families, and groups in assessment, diagnosis treatment, prevention and amelioration of mental emotional conditions. Delivers services that are billable to Medicaid.	Master's degree	License issued by Missouri State Committee for Social Workers
Special Education Administrator	Directs, coordinates, and supervises the district's special education services.	Master's Degree	Special Education Administrator Certificate by the State Board of Education.
Special Education Process Coordinator	Supervises the special education process from referral through placement and provision of services, appropriate identification and placement of students with disabilities; and, district compliance with state and federal requirements for special education.	Master's Degree	Certification in at least one area of special education or related area and knowledge of special education process requirements
Special Education Supervisor/K-12 <ul style="list-style-type: none"> <li>• high school</li> <li>• middle school</li> <li>• elementary</li> </ul>	Directs and assists special education teachers and teacher aides, grades K-12, or any combination thereof, in providing special education services to students with disabilities.	Master's Degree	Certification in at least one area of special education for the area and grade level for which supervision is provided.
Speech Implementer	Assists with the implementation of IEPs under the direction of a speech/language pathologist.	Bachelor's Degree	Missouri teaching certificate or Bachelor's Degree in Communications Disorders

<b>TITLE</b>	<b>RESPONSIBILITIES</b>	<b>EDUCATIONAL QUALIFICATIONS</b>	<b>CERTIFICATES OR LICENSE</b>
Speech/Language Pathologist	Provides direct instruction, consultation with teachers, develops IEPs, writes diagnostic reports, and may provide evaluation services.	Master's Degree OR License issued by the State Board of Registration for the Healing Arts	Speech Specialist certificate issued by the State Board of Education
Speech/Language Pathologist, Diagnostic	Provides evaluation services for students with suspected speech/language disabilities. This person does not have a caseload of students for provision of direct services.		
Speech/Language Pathology Aide	Works under the direct supervision of a licensed speech/language pathologist.	High school diploma or GED	Registration certificate issued by the State Board of Registration for the Healing Arts
Speech/Language Pathology Assistant	Assists with the implementation of IEPs under the direction of a licensed speech/language pathologist.	Bachelor's Degree in communication Disorders or Associate's Degree in SLP Assistant (2005)	Registration certificate issued by the State Board of Registration for the Healing Arts
Teacher <ul style="list-style-type: none"> <li>• Early childhood special education</li> <li>• Hearing impaired</li> <li>• Mild/moderate behavior disorders</li> <li>• Mild/moderate cross categorical</li> <li>• Mild/moderate learning disabilities</li> <li>• Mild/moderate mental retardation</li> <li>• Severe developmental disabilities</li> <li>• Visually impaired</li> </ul>	Direct instruction, consultation with teachers, develop IEPs, writing evaluation reports, travel training, co-teaching, individualized assessments.	Bachelor's Degree	Special Education certification by the State Board of Education in <ul style="list-style-type: none"> <li>• Early Childhood</li> <li>• Hearing Impaired</li> <li>• Mild/moderate cross categorical</li> <li>• Mild/moderate behavior disorders</li> <li>• Mild/moderate learning disabilities</li> <li>• Mild/moderate mental/retardation</li> <li>• Serve Developmental Disabilities</li> <li>• Visually Impaired</li> </ul>
Vocational Resource Educator (VRE)	Assists with the development and implementation of IEPs and the placement of students with disabilities in vocational programs.	Bachelor's Degree	<ul style="list-style-type: none"> <li>• Special Education Certificate or</li> <li>• Counselor or Vocational Certificate and additional coursework as determined by the Vocational Division</li> </ul>
Work Experience Coordinator (WEC) Vocational Adjustment Coordinator (VAC)	Plans, develops, implements, and supervises work experience programs for students with disabilities. Provides direct instruction, participates in IEP meetings, conducts screenings and work assessments.	Bachelor's Degree	Any special education certification issued by the State Board of Education

## **Policy No. 2**

### **RENTAL OR LEASE**

The funds available to LEAs under IDEA-B may be used for facility rental or lease for the purpose of developing, providing or improving special education services. Any rental or leasing must comply with the requirements of Appendix A of part 36 of title 28 Code of Federal Regulations (commonly known as the “Americans with Disabilities Accessibility Guidelines for Buildings and Facilities”) or Appendix A, part 101-19.6 of Title 41, Code of Federal Regulations (commonly known as the “Uniform Federal Accessibility Standards”).

## **Policy No. 3**

### **FUNDING ACCOUNTABILITY -- CONSOLIDATED APPLICATIONS**

#### Cooperative District Arrangement

Composed of LEAs that pool funds for the purpose of participating in coordinated, multi-district special education and related service programs, or for ease of fiscal management.

#### Fiscal Agent For a Cooperative District Arrangement

It is the responsibility of the fiscal agent to set up a clearing account for the purpose of accounting for revenues and expenditures associated with IDEA-B. LEAs may record this revenue in Code 54.35.

#### Fiscal Procedures for a Cooperative

- A. The fiscal agent shall record all expenditures of the cooperative; and,
- B. The clearing account with all substantiating documents shall be included in the biennial audit of the financial records.

Participating districts may access the cooperative application on the Division of Special Education Web site and copies from this site may be used for necessary documentation for the audits of the participating districts.

## **Policy No. 4**

### **PERSONNEL STANDARDS AND REQUIREMENTS**

Personnel paid in full or in part from IDEA-B funds must be appropriately prepared and trained as outlined in Regulation VI.8., Personnel Standards of this State Plan.

Personnel paid entirely with Federal funds or from Federal funds and at least one other source must maintain time and effort documentation prescribed in OMB Circular A-87.

## **Policy No. 5**

### **AUDIT REPORTING AND RECORDS RETENTION**

#### Auditing

A biennial audit of all LEAs will be due in the DESE as required by Sections 165.121, 326.011, 326.021, 326.111, 326.125, and 326.151, RSMo. Audit reporting of IDEA-B transactions should be a part of the regular audit reports and must be in accordance with OMB Circular A- 133.

Information submitted as required for Maintenance of Fiscal Effort will be checked for possible supplant concerns.

#### Retention of Records

Each LEA or fiscal agent receiving funds from IDEA-B shall keep intact and accessible all records supporting claims for such funds or relating to the accountability of the grantee for the expenditure of such funds:

- A. For three (3) years after the submission and acceptance of the final expenditure report for the fiscal year in which the expenditure was made or until all audit questions are resolved, whichever is later. The Web site for IDEA-B application will keep records for review for three years; and,
- B. Records with respect to equipment and supplies must be retained for three (3) years after their final disposition.

The records involved in any claim or expenditure that has been questioned shall be further maintained until necessary adjustments have been made and such adjustments have been reviewed and approved by the Department of Elementary and Secondary Education and/or the U. S. Department of Education.

## **Policy No. 6**

### **FISCAL PROCEDURES**

#### General

IDEA-B provides financial assistance to local education agencies (LEAs) to provide for the education of students with disabilities. LEAs may:

- A. Secure entitlement funds by submitting an approvable Compliance Plan as required by IDEA-B.
- B. Secure preschool grant funds by submitting an approvable grant proposal.

LEAs may only expend IDEA-B funds in a manner consistent with federal and state laws and regulations. The Federal regulations for IDEA-B were published in the 34 Code of Federal Regulations Part 300.

### LEA Supplant vs. Maintenance Of Fiscal Effort

The topics of supplanting of state and local funded programs and maintenance of fiscal effort are similar but distinctly different concepts. The prohibition against the supplanting of state and locally funded programs with federal funds refers to replacing previously committed state/local funds with federal funds. Supplanting must be monitored at the “expenditure level”. Supplanting is addressed in 34 CFR 300-153, 184, and 230. Maintenance of fiscal effort simply implies a total or per-capita level of state and local expenditures in the current year that is equal to or greater than the preceding year. Maintenance of fiscal effort is addressed in 34 CFR 300-154, 231, 232, and 233. Any federal funds expended during a year in which noncompliance of the prohibition against supplanting or lack of maintenance of fiscal effort occurs are recoverable.

Fiscal effort by a LEA shall be determined by the combined state and local expenditures, including salaries and employee benefits, for full-time staff and the prorated costs of part-time staff that provide special educational services to students with disabilities in the school district.

- A. The total amount or average per capita amount of state and local school funds budgeted by the LEA for expenditures in the current fiscal year for the education of students with disabilities must be at least equal to the total amount or average per capita amount of state and local school funds actually expended for the education of students with disabilities in the most recent preceding fiscal year for which the information is available. Allowance may be made for:
- 1) the voluntary departure, by retirement or otherwise, or departure by just cause, of special education or related services personnel, who are replaced by qualified, lower-salaried staff.
  - 2) a decrease in the enrollment of children with disabilities.
  - 3) the termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child has left the jurisdiction of the agency, has reached the age at which the obligation of the agency to provide FAPE to the child has terminated, or no longer needs the program of special education.
  - 4) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

Beginning during the State 1999-2000 fiscal year, a district may use twenty (20) percent of the new money each year to be counted as local effort as defined under 34 CFR 300.233.

Districts submitting application for IDEA, Part B funds must provide assurance that funds provided under Part B of the Act shall be used to supplement and, to the extent practicable, increase the level of state and local funds expended for the education of students with disabilities and, in no case, to supplant those state and local dollars except as provided in IDEA. Procedures for meeting this requirement will be in conformity with the regulations as specified at 34 CFR 300.230 and 34 CFR 300.231.

A district which budgets at least the same total or per-capita amount of state and local funds for special education and related services in the current fiscal year compared to the amount actually expended for those purposes in the immediately preceding fiscal year would be in compliance with 34 CFR 300.231 assuming that all other applicable

provisions of the IDEA-B have been met, the district would be eligible to receive its grant.

The district must be able to verify the actual amount expended during the first preceding year. Any federal funds expended during a year of noncompliance with either supplant or maintenance of fiscal effort requirements are recoverable.

In the event that the district violates the provisions of 34 CFR 300.231 by failing to maintain fiscal effort, the Department of Elementary and Secondary Education will seek to recover the misspent funds. Office of Management and Budget Circular A-133 requires that the state agency determine whether its subrecipients have spent the federal funds in accordance with applicable laws and regulations and further shall insure that a corrective action is taken within six (6) months after instances of noncompliance with federal laws and regulations have been discovered.

To fulfill this requirement, the state provides two (2) options to the district for resolving the violation and the subsequent recovery of the misspent funds.

Option I - The district may refund the total amount of the grant or the amount by which the district failed to maintain effort from the first preceding fiscal year, whichever is the lesser amount. Such refund of funds shall be made from state and/or local dollars available to the district.

Supporting documentation may be required by the Department to substantiate the status of the local program. The amount of expenditures for special education and related services during the year in which the violation occurred shall be considered as the base year for future determination of fiscal effort.

Option II - The district may deobligate the total amount of the grant or the amount by which the district failed to maintain effort from the prior fiscal year, whichever is the lesser amount. Such a deobligation of federal funds would include a corresponding obligation of a similar amount of state or local dollars for the first preceding fiscal year. By book transfer, the state agency will apply the deobligated federal funds to the district's current IDEA-B project.

Supporting documentation may be required by the Department to substantiate the status of the local programs.

If the district chooses to deobligate the federal funds, the amount of expenditures for the first and second preceding years will be equal and will be considered as the base amount for future determination of fiscal effort.

#### Accounting and Payment Procedures

- A. Each LEA and each designated fiscal agent for a cooperative application shall maintain a system of accounting which will reveal the cash received and disbursed under the project and the amount of all paid and unpaid obligations attributable to the project. Such funds shall not be commingled with other available monies.
- B. Funds will be transmitted to LEAs or fiscal agents for cooperative applications for the operation of approved activities according to a schedule determined by the DESE. Districts will be advised of the schedule of payments.
- C. Each LEA or designated fiscal agent shall submit a final report that reflects all actual expenditures. This report shall be due no later than thirty (30) days after the ending date of approved plan.

- D. The final payment of cash due a LEA will be transmitted upon receipt and approval by the DESE of the final report. If the LEA has received more money through an approved discretionary project than was actually expended, the LEA shall refund the overpayment within thirty (30) days of the request by the DESE. Overpayment by the DESE on entitlement projects will be credited to initial payment on the ensuing year's project. Appropriate records shall be maintained to verify all expenditures of funds received under IDEA-B.

#### Withholding of Payments

Whenever the DESE, after reasonable notice and opportunity for a hearing to any LEA, finds a failure to comply with any provision of applicable state or federal law, the DESE will notify the LEA of curtailment of funds under IDEA-B. Only after compliance has been established will funds be released.

Prior to initiating a hearing under this section, the DESE will attempt to resolve any apparent differences with the LEA.



## **Policy No. 7**

### **INDIRECT COSTS POLICY FOR IDEA-B PROJECTS**

In addition to the direct cost of providing instruction and support service to students with disabilities, an IDEA-B project may include indirect costs for administrative services not readily identifiable with a project. Administrative services which typically could be claimed through the indirect cost method includes such cost as general administration of the project, personnel services, budget and financial services, purchasing and procurement, and other services usually provided through the central office of the LEA.

The administrative costs associated with IDEA-B projects are of a type that cannot be readily identifiable. Some examples would be postage, telephone, cost of writing checks, cost of preparing and submitting purchase orders, and other similar costs.

OMB Circular A-87 and the Education Division General Administrative Regulations make it possible for school districts to recover such costs through the establishment of a restricted indirect cost rate. The restricted indirect cost rates are applicable to IDEA-B programs.

A restricted indirect cost rate is, in simplified language, the ratio of general administrative costs incurred by an LEA to all other costs, with certain exclusions. The ratio is determined using a procedure and formula developed by the DESE and approved by the federal government. Each LEA that wishes to recover indirect costs under IDEA-B must request the proper forms from the School Finance Section. Upon completion, the forms will be returned to the School Finance Section for review and approval.

The following are examples of costs that may not be claimed as direct costs to IDEA-B programs, but may be recoverable under the indirect cost method:

- A. salaries of persons who provide administrative services to IDEA-B activities on less than an exclusive basis and whose time cannot be determined and recorded in auditable manner without undue effort;
- B. the salaries of any persons, whether full or part time, who engage in activities which have as their purpose the general regulation, direction, and control of the affairs of the LEA such as bookkeeping, finance, purchasing, data processing, secretarial, clerical, or other personnel services;
- C. audit costs; and,
- D. general administrative expenses such as postage, telephone, administrative travel, and office supplies.

Indirect costs may be claimed by multiplying the approved indirect cost rate by the total direct project costs, minus costs for capital outlay, debt services, or election expenses unless the election is required by a program statute. Should a LEA reduce or increase its IDEA-B project budget during the project period, or fail to expend the entire project budget, the amount of indirect cost allowed must be adjusted accordingly. Records of use of indirect costs calculations will be kept for audit purposes by the local district.

## **XI. STATE OPERATED PROGRAMS**

### **1. SEA PROVISION OF DIRECT SERVICES**

The Missouri Department of Elementary and Secondary Education provides free appropriate public education services for students with disabilities through three State Board of Education Operated Programs: School for the Deaf, School for the Blind, and the State Schools for Severely Handicapped.

It is the policy of the Missouri Department of Elementary and Secondary Education that the requirements of Part B of the IDEA are implemented by the State Board of Education Operated Programs responsible for the education of students with disabilities. Each State Board Operated Program is required to submit a Compliance Plan that specifies the policies and procedures necessary to meet the requirements of IDEA.

The DESE ensures that each educational program for children with disabilities administered by the State Board of Education is under the general supervision of the Division of Special Education, Department of Elementary and Secondary Education, and that their programs meet the standards of the SEA.

The DESE ensures that funds provided under Part B to support SEA direct services are used in accordance with Regulation IX.5. of this State Plan, with the exception of those policies related to excess cost.

### **2. STATE SCHOOLS FOR SEVERELY HANDICAPPED**

#### Regulations for Services

The State Schools for Severely Handicapped, a system of day school services in separate school settings, were established by state law to serve those students with severe disabilities referred to the State Board of Education by local school districts which do not operate such programs themselves and which are not a part of special school districts. If the evaluation information and the Individualized Education Program (IEP) compiled by the local district supports separate school placement as the student's least restrictive educational environment, the local education agency may seek determination of student eligibility for services. The following procedural information is provided to assist school districts in accessing services from the State Schools for Severely Handicapped.

#### **A. Eligibility for State Schools for Severely Handicapped**

- 1) Students with severe disabilities are those students who generally have significant cognitive deficits as evidenced by one of the two methods described below:

The student obtains scores falling four or more standard deviations below the mean on standardized measures of cognitive functioning and shows commensurate deficits in at least two areas of adaptive functioning.

OR

The student is not able to respond to any standardized measure of cognitive ability due to a combination of sensory and/or motor impairments, but diagnostic information indicates significant deficits in intellectual and adaptive behavior skills, and the student requires pervasive level of supports across all life areas, as defined by the American Association for Mental Retardation (AAMR) classification system.

This identification shall result from comprehensive evaluation that is consistent with the procedures in Regulation III.3., Procedures for Evaluation and Determination of Eligibility.

- 2) The presence of significant cognitive deficits may permeate a student's educational condition so as to render him/her severely disabled. A student with severe or multiple disabilities would evidence the presence of significant cognitive deficits along with one or more of the other educationally disabling conditions.

Students who educationally benefit from special education and related services that can be provided by local educational agencies are not considered eligible for services through the State Schools for Severely Handicapped. In general, students with disabilities such as cognitive deficits falling two to three standard deviations below the mean, Speech or Language Impairments, Hearing Impaired/Deaf, Visually Impaired/Blind, Learning Disabilities, Emotional Disturbance, Other Health Impaired, Traumatic Brain Injury, or Orthopedically Impaired can receive an appropriate education when served by local educational agencies.

A student with a severe disability may enroll in the State Schools for Severely Handicapped upon attaining the age of five (5) years. Extended School Year services shall be provided to students who attain age five (5) years during the summer, if eligible for such services.

#### B. Referral Procedures

In order to assure compliance with applicable state and federal laws and regulations governing identification, evaluation, IEP development, and educational placement procedures for students who may be enrolled in the State Schools for Severely Handicapped, the following procedures have been adopted

### C. Reevaluation

- 1) At least once every three (3) years, the local district shall conduct a reevaluation. Reevaluation shall be conducted in accordance with Regulation III.3., Procedures for Evaluation and Determination of Eligibility.
- 2) Results of the reevaluation shall be submitted to the State Schools for Severely Handicapped for review. Additional data may be requested by the State Schools for Severely Handicapped to clarify the student's educational needs.

### D. Transfer of Students

- 1) Transfer within the State Schools for Severely Handicapped System

A student who is enrolled in a State School for Severely Handicapped and moves from one school district to another may transfer enrollment immediately on the basis of the justification for separate school placement, current IEP and evaluation report. This is considered an interim placement, not to exceed thirty (30) days, during which the new local district follows the transfer procedures provided within Regulation III.3., Procedures for Evaluation and Determination of Eligibility, to confirm concurrence with placement in the State Schools for Severely Handicapped as the least restrictive educational environment for the student. If this review results in determination that the State Schools for Severely Handicapped is the least restrictive environment, the district will compile and submit to the State Schools the Agreement for Continued Placement under the existing IEP.

- 2) Transfer of Students with Severe Disabilities from a Missouri School District, a Special School District, or an Out-of-State Program

A thirty (30) day interim placement in the State Schools for Severely Handicapped may be available for students with severe disabilities who are changing school districts due to a change in residence. These students must have been receiving services in their local district; through cooperative arrangement by their home district with another school district; in a special school district; or in an out-of-state program for students with severe disabilities.

To qualify for this interim placement, the following criteria must be met:

- a) The current IEP and evaluation report are adopted by the new school district pursuant to transfer procedures provided within Regulation IV.3., Least Restrictive Environment.
- b) The new district submits a copy of the student's current IEP and evaluation report to the State Schools for Severely Handicapped with a

letter acknowledging adoption of the documents. In addition, the district requests that the student be served in a thirty (30) day interim placement while district staff and parents consider the least restrictive educational environment for the youngster.

- c) The State Schools for Severely Handicapped will issue a letter of interim placement assignment if the information submitted is viewed as substantiating the request.
- d) Enrollment paperwork must be completed at the onset of the thirty (30) day interim placement period.
- e) During the thirty (30) day interim placement, the local district shall follow the referral procedures to seek eligibility determination in accordance with B 1-6 above.
- f) Upon receipt of the Referral, the State Schools for Severely Handicapped will issue a notice of action to the district and parents confirming continued placement in the State School.

If the State Schools for Severely Handicapped is not confirmed as the student's least restrictive educational environment, the local district is notified of this decision and becomes responsible for providing the required special education and related services in accordance with Regulation V, Procedural Safeguards, and Regulation IV.2., Individualized Education Programs.

### **3. MISSOURI SCHOOL FOR THE BLIND AND MISSOURI SCHOOL FOR THE DEAF**

The Missouri School for the Blind (MSB) and Missouri School for the Deaf (MSD) are established by state law to serve those students referred to the State Board of Education by local school districts who may require such services to receive a free appropriate public education. If the evaluation information and the Individualized Education Program (IEP) compiled by the local district supports separate school placement as the student's least restrictive educational environment, the local education agency may seek determination of student eligibility services. The following procedural information is supplied to assist school districts in accessing services from the Missouri School for the Deaf and Missouri School for the Blind.

#### **A. Eligibility for MSB and MSD**

- 1) MSB: Students who are Blind or Visually Impaired, for purposes of MSB eligibility, are those students who meet the state eligibility criteria for Visual Impairment. Students, who meet the state eligibility category criteria for State Schools for Severely Handicapped (SSSH), are not eligible for MSB.
- 2) MSD: Students who are Deaf or Hearing Impaired, for purposes of MSD eligibility, are those students who meet the state eligibility criteria for Deaf/Hearing Impaired. Students, who meet the state eligibility criteria for SSSH, are not eligible for MSD.
- 3) A student may enroll in MSB and MSD upon attaining the age of five (5) years. Extended School Year services shall be provided to students who attain age five (5) years during the summer, if eligible for such services.

## B. Referral Procedures

In order to assure compliance with applicable state and federal laws and regulations governing identification, evaluation, IEP development, and educational placement procedures for students who may be enrolled in either the Missouri School for the Deaf or Missouri School for the Blind program, the following procedures have been adopted by the State Board of Education. The local school district is encouraged to request a professional employee of MSB or MSD to participate in this process. Such requests for participation shall be honored when made during the school term and when schedules permit.

- 1) All students identified as potentially in need of services from the State Board operated programs shall be enrolled in local school district programming pending the determination of such need.
- 2) The local school district in which the student resides shall complete a comprehensive and appropriate evaluation information, current within three (3) years. Additional evaluations may be required as determined necessary for individual students. The evaluation information must be obtained in accordance with state regulations (Procedures for Evaluation and Determination of Eligibility). Additional educational records or other pertinent information may be required by MSB or MSD to clarify the student's educational needs.
- 3) Following compilation of evaluation information, the local school district where the student resides is responsible for development of an IEP for the current school term in accordance with the requirements of state regulation provisions for Individualized Education Programs. The district must consider all service options, including service through a separate school placement, to determine which is appropriate to meet the student's educational needs.
- 4) If the IEP team is considering separate school as a placement option for the student, they must document the justification for such placement in writing. This documentation must include that the district has:
  - a) considered educating the child in the LEA;
  - b) identified supplementary aids and services that would be needed to educate the child in the LEA; and,
  - c) articulated why the LEA cannot serve the child in the LEA in a placement that would benefit the child.
- 5) When the IEP indicates the student is in need of services which the local district is unable to provide and which may be provided by the MSB or MSD, the local school district may forward the evaluation report current IEP, and justification for separate school placement to MSB or MSD for eligibility review. The preceding IEPs, if applicable, and related educational records and other pertinent information for all services provided by the local district shall also be forwarded. Additional information may be requested on an individual student basis. Following a professional review of this information, the district shall be notified whether or not the student is eligible for services through MSB or MSD. The eligibility determination is not appealable and is a unilateral determination made by MSB or MSD, respectively.
- 6) Should the district be notified that the student is eligible for MSB or

MSD the district may refer the student. Notice of such decision to refer shall be given to the parent in accordance with the law including an explanation of their right to appeal the action through use of their due process hearing rights. The district shall submit the Referral only after the parents have received an explanation of the Procedural Safeguards. If the IEP at time of request does not reflect a total of 1800 minutes of service per week, the district must reconvene the IEP team before submitting the referral so as to ensure an IEP team decision on actual minutes needed to provide FAPE.

- 7) Upon receipt of the Referral, enrollment papers will be mailed to the parent by MSB or MSD.
- 8) Within thirty (30) days following initial enrollment of the student in MSB or MSD, an IEP meeting shall be held. The purpose of this review is to confirm the eligibility and appropriateness of continued enrollment in MSB or MSD as the least restrictive environment to provide a free appropriate public education for the student and to make necessary revisions in the student's IEP. The student's teacher, other appropriate professional personnel from the school, a representative of the referring district, and the student's parents shall be invited to participate in this review. The parents shall be informed of their right to appeal, in accordance with the Procedural Safeguards, any decision made as a result of this review, including any change in placement decision made as a result of this review. If the IEP team meeting results in a determination that the student is ineligible for services at MSB, the home district will be notified and will need to locate another entity to implement the IEP or revise the IEP if appropriate, pursuant to proper IEP process.

When a clear decision cannot be made for eligibility for services through MSB or MSD, the district will be notified that an interim IEP will be required for a trial basis placement. The interim trial basis for placement must be clearly reflected in the IEP.

- 9) IEP teams will be convened annually or more frequently, if needed, to review and/or rewrite, if appropriate, the IEPs for all students enrolled in MSB or MSD.
- 10) At any time the IEP team may determine, based on general functioning level and progress shown, that the student's least restrictive environment for educational placement is the local district. In such instances, the IEP team reviews the IEP, existing data, and education record to determine the plan through which the student will be transitioned to the local school district for services.

#### C. Reevaluation

- 1) At least once every three (3) years, the local district shall conduct a reevaluation. Reevaluation shall be conducted in accordance with the provision of the evaluation regulations.
- 2) Results of the reevaluation shall be submitted to MSB and MSD for review. Additional data may be requested by MSB or MSD to clarify the student's educational needs.

#### D. Subsequent Referral Procedures

The following procedures have been adopted by the State Board of Education for annual enrollment.

- 1) Missouri School for the Deaf or Missouri School for the Blind shall mail a copy of the Letter of Referral to the referring district on an annual basis.
- 2) Personnel from the referring district shall be invited to review the educational progress displayed by the student during the proceeding school term and participate in the development of the student's IEP.
- 3) If the referring district determines a continuing need for services from the Missouri School for the Deaf or Missouri School for the Blind, as documented in the student's IEP, the superintendent of the district shall amend any identifying information concerning the student or parent, as is necessary, sign the referral form, and submit the referral to the Missouri School for the Deaf or Missouri School for the Blind.
- 4) The determination of whether to accept the re-referral for the new school year is a unilateral decision to be made by Missouri School for the Deaf or Missouri School for the Blind and is not appealable. Upon rejection of the re-referral, a home district is responsible for provision of a free appropriate public education.
- 5) At least once every three (3) years, the local district shall submit a reevaluation of the student consistent with the evaluation criteria described above.
- 6) The Missouri School for the Deaf or Missouri School for the Blind shall mail a Letter of Notification to the Parent or Guardian and Local School District of every student enrolled in the previous year who is expected to return and who has been referred by the local school district.